

To: CN=Donna Somboonlakana/OU=R2/O=USEPA/C=US@EPA[]
Cc: CN=Lynda Hall/OU=DC/O=USEPA/C=US@EPA;CN=Rick Seaborne/OU=R10/O=USEPA/C=US@EPA[]; N=Rick Seaborne/OU=R10/O=USEPA/C=US@EPA[]
Bcc: []
From: CN=Don Wayne/OU=DC/O=USEPA/C=US
Sent: Wed 1/2/2013 3:19:18 PM
Subject: Re: CZARA Litigation in U.S. District Court in Oregon according to the lawsuit

Donna,

This lawsuit was settled out of court, and a judge signed the settlement agreement. Part of the agreement was for Oregon to make progress by dates certain and to achieve certain milestones. One milestone was reached on 12/31/12 when EPA & NOAA had to assess Oregon's approach and progress to date for meeting the key management measure of concern raised by the litigant ("additional management measures for forestry"). That letter was sent on 12/21/12 and states that OR is behind schedule, with the implication that it is in danger of losing 30% of its CWA section 319 funds (and CZMA section 306 funds). The final deadline in the settlement agreement is Nov. 15, 2013, which is when EPA & NOAA must decide whether to formally approve or disapprove the states coastal nonpoint program.

No other state has lost 319 (or 306) funds, but many of the remaining states have gotten more serious about completing approvable coastal nonpoint programs as a result of the lawsuit. The Coastal States Organization has hosted monthly conference calls with its states, and approx. every other month, they pick an issue within CZARA to discuss with the feds (me + others). It has helped.

Don

From: Lynda Hall/DC/USEPA/US
To: Donna Somboonlakana/R2/USEPA/US@EPA
Cc: Brad Lamb/R6/USEPA/US@EPA, Christina Yin/R9/USEPA/US@EPA, Don Wayne/DC/USEPA/US@EPA, Fred Suffian/R3/USEPA/US@EPA, Peter Monahan/R8/USEPA/US@EPA, Rick Seaborne/R10/USEPA/US@EPA, Sandra Fancieullo/R1/USEPA/US@EPA, Steve Schaff/R7/USEPA/US@EPA, Steven Epting/DC/USEPA/US@EPA, Thomas Davenport/R5/USEPA/US@EPA, Yolanda Brown/R4/USEPA/US@EPA, Don Wayne/DC/USEPA/US@EPA
Date: 01/02/2013 09:21 AM
Subject: Re: CZARA Litigation in U.S. District Court in Oregon

Happy New Year All!

Neither Oregon nor any other state has lost funds through the CZARA penalty provision. However this litigation has progressed and Oregon is closer to a point where loss of 319 funds could happen if inadequate progress is made on its CNMP. An important litigation deadline is looming in November 2013.

Don or Rick Seaborne can provide more detail for those who are interested.

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To: Brad Lamb/R6/USEPA/US@EPA, Christina Yin/R9/USEPA/US@EPA, Don Wayne/DC/USEPA/US@EPA, Fred Suffian/R3/USEPA/US@EPA, Peter Monahan/R8/USEPA/US@EPA,

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Date: 12/31/2012 08:15 AM

Subject: CZARA Litigation in U.S. District Court in Oregon

Hi everyone,

Dov passed this around in 2009 and I am wondering if any state has been impacted by this financially?
HAPPY NEW YEAR TO ALL!

http://insideepa.com/secure/docnum.asp?f=epa_2001.ask&docnum=4172009_nonpoint

Activists' Lawsuit Could Limit States' Nonpoint Source Grant Funding

Environmentalists in a first-of-its-kind lawsuit are challenging the federal government's longtime "conditional approval" of state plans to manage nonpoint source pollution -- an effort that, if successful, could threaten at least 13 states' eligibility for hundreds of millions of dollars of Clean Water Act (CWA) and Coastal Zone Management Act (CZMA) grants.

At issue are states' management plans under the Coastal Nonpoint Pollution Control Program, administered jointly by EPA and the National Oceanic & Atmospheric Administration (NOAA). Federal approval of the plans allows states to be eligible for coastal management grants of over \$68 million a year and CWA section 319 grants -- for nonpoint pollution control -- which nationally comprise over \$200 million annually.

EPA and NOAA, however, have for years been issuing states "conditional approval" of their coastal nonpoint management plans, allowing states to receive grant money while they take several years to meet the conditions necessary for grant eligibility.

Environmentalists in Northwest Environmental Advocates v. Carlos M. Gutierrez et al. allege these conditional approvals are unlawful and argue that EPA and NOAA should instead withhold 30 percent of the applicable grant money for the relevant states until their coastal management plans are fully in place. CZMA requires EPA and NOAA to withhold 30 percent of these grant funds from states that fail to submit an approvable program, according to the lawsuit.

The lawsuit, filed Jan. 6 in the U.S. District Court for the District of Oregon, could also require states to meet a costly set of criteria before again becoming once again eligible for the grants.

The litigation follows a September 2008 Government Accountability Office report that urged NOAA to "address a number of weaknesses in its current processes for awarding grants, evaluating state performance, and assessing the effectiveness" of the coastal zone management program.

Earlier this month, however, Judge Paul Papak granted a temporary stay in the case until May 29 to allow activists and the Justice Department to continue settlement discussions. The parties' request for the stay, which Papak granted April 6, says, "All parties believe the March 10 settlement discussions were positive and desire to dedicate their short-term resources to continuing those discussions."

State officials, meanwhile, remain greatly concerned by the threat of lost grant money in a time of already-reduced revenues due to the sour state of the economy, one environmentalist says. A NOAA source says it would be difficult for the states with outstanding conditional approvals to quickly satisfy the criteria keeping them from compliance.

According to NOAA, 45 percent of coastal states still have conditional approvals of their nonpoint management plans, including Alabama, Alaska, Georgia, Hawaii, Indiana, Louisiana, Michigan, Mississippi, New Jersey, Ohio, Oregon, Texas and Washington. NOAA awarded over \$68 million in grants for states' coastal zone management programs in fiscal year 2008, while EPA awarded over \$200 million in CWA section 319 grants in FY08. Of this, \$22.7 million in NOAA grants went to states with conditional approval, while \$55.1 million in EPA grants went to the states.

If EPA and NOAA withheld 30 percent of the funding, the states with conditionally approved programs would lose \$6.8 million in NOAA grants and \$16.5 million in EPA grants.

EPA and NOAA judge state nonpoint management plans under a set of criteria EPA developed in 1993. The criteria include provisions regarding agricultural, forestry, urban, marina and recreational boating, and dam sources of nonpoint pollution as well as wetlands management and monitoring criteria.

The NOAA source says states have had the most difficulty implementing the "onsite disposal systems" provisions under the urban pollution source criteria. Such disposal systems include septic systems, intermittent sand filters, cluster systems and constructed wetlands. The EPA criteria sets limits to protect waste from reaching groundwater, among other areas.

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